

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

U.S. DISTRICT COURT  
SAVANNAH DIV.  
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SOUTHERN DIST. OF GA.

UNITED STATES OF AMERICA )

v. )

CASE NO. CR414-196

VIACHESLAV ZHUKOV, )

Defendant. )

O R D E R

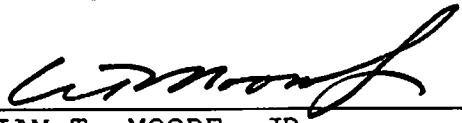
Before the Court is Defendant's Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3742(h) and 18 U.S.C. § 3553(b) in Light of Post-Sentencing Rehabilitation. (Doc. 75.) Defendant requests a reduction of sentence because of his participation in institutional programs while incarcerated, as well as his otherwise good behavior. (Id.) As an initial matter, neither 18 U.S.C. § 3742(h) nor 18 U.S.C. § 3553(b) provide the authority for the relief Defendant requests. 18 U.S.C. § 3742(h) allows a defendant to appeal to the district court an otherwise final judgment imposed by a magistrate judge. However, Defendant's sentence was imposed by this Court, not a magistrate judge. Likewise, 18 U.S.C. 3553(b) merely provides the Court's authority to impose a downward departure.

Moreover, the case law cited by Defendant does not support a reduction of sentence for good behavior. First, United States v. Willey, 350 F.3d 736 (8th Cir. 2003), holds that post-offense

behavior was not sufficient to grant a downward departure to a defendant and provides no support for a reduction of sentence based on post-offense behavior. Id. at 739. Second, Pepper v. United States, 562 U.S. 476 (2011), merely notes that when a defendant's sentence has been set aside on appeal, the district court may consider post-sentencing conduct. Id. at 481. In this case, Defendant's sentence has not been set aside on appeal.

Finally, the Court may not reduce Defendant's sentence pursuant to 18 U.S.C. § 3582(c). That section authorizes the modification of a defendant's sentence (1) if the Director of the Bureau of Prisons has moved for such a reduction based on either extraordinary and compelling reasons or because the defendant is at least 70 years old, has served a term of at least 30 years in prison, and is not a danger to the community; (2) pursuant to Rule 35 of the Federal Rules of Criminal Procedure; or (3) if the defendant's sentencing range has been retroactively lowered by the sentencing commission. None of these situations are applicable to Defendant. Accordingly, Defendant's motion (Doc. 75) is **DENIED**.

SO ORDERED this 3<sup>rd</sup> day of January 2017.

  
WILLIAM T. MOORE, JR.  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA